

BEFORE THE SECRETARY OF LABOR
KANSAS DEPARTMENT OF LABOR
401 SW TOPEKA BLVD.
TOPEKA, KS 66603

In re: KC Waterpark Management, LLC,
dba Schlitterbahn – Kansas City;

KDOL Case No. 2018-AR-0001

NOTICE OF VIOLATION

(Pursuant to K.S.A. 44-1602, K.S.A. 44-1610, and K.A.R. 49-55-12)

I, the undersigned, being duly sworn state the following is true and correct to the best of my knowledge and belief:

I. **The nature of the violation and facts supporting the determination that a violation took place:**

KC Waterpark Management, LLC, dba Schlitterbahn – Kansas City (hereinafter “Schlitterbahn”), located in Kansas City, Kansas, is an owner/operator of eleven amusement rides as defined under the Kansas Amusement Ride Act, K.S.A. 44-1601, *et seq*, and amendments thereto.

On July 1, 2017, Schlitterbahn was issued permits for eleven amusement rides: Bahnzai Pipeline tube water slide, Serial Number: WW-09-201A; Black Knight tube water slide, Serial Number: WW-09-203D; Blitz Falls Aquaveyor, Serial Number: SDG-10-501; Boogie Bahn, Serial Number: SDG-12-401; Cyclone water slide, Serial Number: L-11-205; King Kaw Aquaveyor, Serial Number: SDG 11-502; Soaring Eagle Zipline, Serial Number: 31; Storm Blaster water slide, Serial Number: SDG-09-204; Twister water slide, Serial Number: L-11-206; Whirlwind water slide, Serial Number: L-11-207; and Wolfpack water slide, Serial Number: WW-09-202C. Those permits expire July 1, 2018.

On May 4, 2018, Kansas Department of Labor (KDOL) Amusement Ride Coordinator, Marlea James, contacted Schlitterbahn General Manager Matt Lawrence to inform him that KDOL would be conducting an audit of Schlitterbahn under the Kansas Amusement Ride Act.

On May 16, 2018, a KDOL audit team lead by Amusement Ride Coordinator, Marlea James, began a compliance audit of the eleven rides that have permits issued by KDOL. The audit was conducted on-site at Schlitterbahn between May 16, 2018 and May 17, 2018, in accordance with KSA 44-1602 and KAR 49-55-8. The facility had ceased operation of the amusement rides over the winter months, and is planning to open operations to the general public May 25, 2018.

During the course of the compliance audit, KDOL auditors inspected documents on-site and conducted a walkthrough of the waterpark. Additional documents have been requested but have not been received to date. At the time of the audit, KDOL auditors observed a third-party inspection company hired by Schlitterbahn on-site performing the required annual inspection of the eleven amusement rides. Schlitterbahn stated in the 2017 Report of Itinerary filed with KDOL that the last annual inspection of the amusement rides occurred May 1, 2017. As of the date of the compliance audit, Schlitterbahn had not filed the 2018 Report of Itinerary with KDOL, nor provided the 2018 Certificate of Inspection or the 2018 Inspection Report. Additionally, Schlitterbahn was unable to provide a copy of the 2017 Inspection Report.

Schlitterbahn had the following representatives present during the compliance audit: Matt Lawrence, General Manager; Blake Hendricks, Operations Director for Kansas City Schlitterbahn; Keith Fontenot, Operations Director for all Schlitterbahn waterparks; and legal counsel Erin Thompson.

Prior to departing the facility on May 17, 2018, the KDOL audit team briefed Schlitterbahn representatives of the audit findings. Schlitterbahn representatives did not dispute the audit findings.

KDOL has issued an audit report dated May 16, 2018 and May 17, 2018, which contains a comprehensive description and itemization of audit observations and findings. The audit report is attached to this Notice of Violation and the entire report is incorporated by reference. The audit report provides the factual basis for each violation in this Notice of Violation.

Each violation listed in this Notice of Violation and in the audit report, have been a requirement applicable to Schlitterbahn since July 1, 2017, and those requirements were not amended by 2018 Senate Bill 310, which went into effect on May 17, 2018, during the compliance audit. Additionally, the relevant permanent regulations were published on September 28, 2017 and are fully enforceable in accordance with KSA 44-1602, KSA 44-1610, KSA 44-1614, KSA 44-1619, KAR 49-55-2(d) and KAR 49-55-12.

II. Possible penalties and remedies:

In accordance with K.S.A. 2017 Supp. 44-1602 and amendments thereto:

- A warning citation for violation of the Amusement Ride Act shall be issued against any owner or operator for a first violation.

In accordance with K.S.A. 2017 Supp. 44-1610 and amendments thereto:

- It is a class B misdemeanor for an owner or operator of an amusement ride knowingly to operate, or cause or permit to be operated, any amusement ride without a valid permit issued by the Secretary.

- A notice of violation may be issued by the department when an amusement ride is found to be out of compliance with the provisions of this act, or any rules or regulations adopted pursuant thereto. The notice of violation may include an order to cease and desist operation of the specific amusement ride until all violations are satisfactorily corrected.
- The secretary may impose a fine of not more than \$1,000 for any violation of the provisions of this act, or any rules or regulations adopted pursuant thereto.
- Each day a violation continues shall constitute a separate offense.

III. Violation(s):

The entire audit report entitled Schlitterbahn Audit, dated May 16-17, 2018, is attached and is incorporated by reference.

Count 1

Amusement Ride: Bahnzai Pipeline tube water slide, Serial Number: WW-09-201A

Audit finding(s) #: 1, 2, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18

Statute(s)/Regulation(s) violated:

KSA 44-1602, KSA 44-1603, KSA 44-1604, KSA 44-1605, KAR 49-55-2, KAR 49-55-6, KAR 49-55-7, KAR 49-55-9, and KAR 49-55-10

Count 2

Amusement Ride: Black Knight tube water slide, Serial Number: WW-09-203D

Audit finding(s) #: 1, 2, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32

Statute(s)/Regulation(s) violated:

KSA 44-1602, KSA 44-1603, KSA 44-1604, KSA 44-1605, KAR 49-55-2, KAR 49-55-6, KAR 49-55-7, KAR 49-55-9, and KAR 49-55-10

Count 3

Amusement Ride: Blitz Falls Aquaveyor, Serial Number: SDG-10-501

Audit finding(s) #: 1, 2, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45

Statute(s)/Regulation(s) violated:

KSA 44-1602, KSA 44-1603, KSA 44-1604, KSA 44-1605, KAR 49-55-2, KAR 49-55-6, KAR 49-55-7, KAR 49-55-9, and KAR 49-55-10

Count 4

Amusement Ride: Boogie Bahn, Serial Number: SDG-12-401

Audit finding(s) #: 1, 2, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59

Statute(s)/Regulation(s) violated:

KSA 44-1602, KSA 44-1603, KSA 44-1604, KSA 44-1605, KAR 49-55-2, KAR 49-55-6, KAR 49-55-7, KAR 49-55-9, and KAR 49-55-10

Count 5

Amusement Ride: Cyclone water slide, Serial Number: L-11-205

Audit finding(s) #: 1, 2, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74

Statute(s)/Regulation(s) violated:

KSA 44-1602, KSA 44-1603, KSA 44-1604, KSA 44-1605, KAR 49-55-2, KAR 49-55-6, KAR 49-55-7, KAR 49-55-9, and KAR 49-55-10

Count 6

Amusement Ride: King Kaw Aquaveyor, Serial Number: SDG 11-502

Audit finding(s) #: 1, 2, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88

Statute(s)/Regulation(s) violated:

KSA 44-1602, KSA 44-1603, KSA 44-1604, KSA 44-1605, KAR 49-55-2, KAR 49-55-6, KAR 49-55-7, KAR 49-55-9, and KAR 49-55-10

Count 7

Amusement Ride: Soaring Eagle Zipline, Serial Number: 31

Audit finding(s) #: 1, 2, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103

Statute(s)/Regulation(s) violated:

KSA 44-1602, KSA 44-1603, KSA 44-1604, KSA 44-1605, KAR 49-55-2, KAR 49-55-6, KAR 49-55-7, KAR 49-55-9, and KAR 49-55-10

Count 8

Amusement Ride: Storm Blaster water slide, Serial Number: SDG-09-204

Audit finding(s) #: 1, 2, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117

Statute(s)/Regulation(s) violated:

KSA 44-1602, KSA 44-1603, KSA 44-1604, KSA 44-1605, KAR 49-55-2, KAR 49-55-6, KAR 49-55-7, KAR 49-55-9, and KAR 49-55-10

Count 9

Amusement Ride: Twister water slide, Serial Number: L-11-206

Audit finding(s) #: 1, 2, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131

Statute(s)/Regulation(s) violated:

KSA 44-1602, KSA 44-1603, KSA 44-1604, KSA 44-1605, KAR 49-55-2, KAR 49-55-6, KAR 49-55-7, KAR 49-55-9, and KAR 49-55-10

Count 10

Amusement Ride: Whirlwind water slide, Serial Number: L-11-207

Audit finding(s) #: 1, 2, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145

Statute(s)/Regulation(s) violated:

KSA 44-1602, KSA 44-1603, KSA 44-1604, KSA 44-1605, KAR 49-55-2, KAR 49-55-6, KAR 49-55-7, KAR 49-55-9, and KAR 49-55-10

Count 11

Amusement Ride: Wolfpack water slide, Serial Number: WW-09-202C

Audit finding(s) #: 1, 2, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159

Statute(s)/Regulation(s) violated:

KSA 44-1602, KSA 44-1603, KSA 44-1604, KSA 44-1605, KAR 49-55-2, KAR 49-55-6, KAR 49-55-7, KAR 49-55-9, and KAR 49-55-10

IV. Specification of action that the owner shall take in order to comply with the act and/or regulations:

Counts 1 through 11 on May 16-17, 2018, constitute a first offense, therefore a **WARNING** is issued in accordance with K.S.A. 2017 Supp. 44-1602(d), and amendments thereto;

The operator must comply with all audit findings and comments itemized in the audit report dated May 16-17, 2018.

It is a violation of the Kansas Amusement Ride Act to operate an amusement ride in violation of the Act or the regulations under the Act. Each day a violation continues shall constitute a separate offense.

A non-exhaustive summary of some of the most significant audit findings and required action is as follows:

- 1) Once all necessary documents are available as described in the audit, including but not limited to obtaining manufacturer maintenance and operation manuals, the owner/operator must contact KDOL for a follow-up audit to take place. KDOL was unable to audit many of the necessary aspects of operations and maintenance at the waterpark because operations and maintenance practices must follow the manufacturer's recommendations, which are published in the manufacturer manuals that the operator was unable to provide;
- 2) Training programs need to be developed in writing, including maintenance training, operator training, positions, responsibilities, trainer qualifications, and communication procedures, and then the owner/operator must contact KDOL to allow a follow-up audit to take place;
- 3) The owner/operator needs to train staff on how to determine whether guests meet passenger maximum/minimum height and weight requirements per manufacturer recommendations, and those determinations and methods need to be documented and presented to KDOL auditors;
- 4) Owner/Operator standard operating procedures (SOPs) shall be based off relevant ASTM standards (F770 and/or F2376) and manufacturer maintenance and operation manual requirements, and those SOPs need to be documented and presented to KDOL auditors;
- 5) Safety signage for each ride needs to be produced in accordance with ASTM F770/F2376 requirements, and safety signs need to be posted at or near the entrance of each ride and reviewed by KDOL auditors;
- 6) If applicable, per manufacturer manual requirements, Non-Destructive Testing (NDT) requirements and applicable inspection documents need to be made available to KDOL auditors for each ride, this includes but not limited to inspector NDT qualifications, written practices and inspection reports;
- 7) Operation requirements for each ride based on manufacturer recommendations, including but not limited to water flow requirements, passenger maximum/minimum height and weight requirements must be made available to KDOL auditors; actual water flow (GPM) will be verified per manufacturer requirements;

- 8) Daily and annual inspection requirements for each ride based on manufacturer recommendations, and applicable inspection documents, need to be made available to KDOL auditors for each ride;
- 9) Daily and annual maintenance requirements for each ride based on manufacturer recommendations, and applicable maintenance documents, need to be made available to KDOL auditors for each ride, (Note: This includes, but is not limited to, evidence that the Soaring Eagle Zip line appears to have far exceeded the 5000 cycle, main drive cable, required maintenance inspections and the certified weld inspector inspection, without any record of those inspections);
- 10) General safety procedures for Soaring Eagle (example: Lock-Out-Tag-Out, and evacuation plan including training with different scenarios) need to be developed and provided to KDOL auditors;
- 11) Soaring Eagle Zipline is entering six operating season and many parts required replacement per manufacturer manual page 4-12, every five years or 150,000 cycles, and should be addressed, and applicable maintenance documents need to be made available to KDOL auditors;
- 12) Soaring Eagle Zipline main drive cable has not been replaced per manual requirements as described in the manufacturer manual section 4.2 (pg 4-12) and should be addressed and applicable maintenance documents need to be made available to KDOL auditors;
- 13) Soaring Eagle Zipline missing height measurement device at the entrance should be replaced and applicable maintenance documents need to be made available to KDOL auditors;
- 14) Storm Blaster waterslide missing height measurement device at the entrance should be replaced and applicable maintenance documents need to be made available to KDOL auditors; and
- 15) 2017 and 2018 annual inspection report for each ride needs to be maintained on site for three years, and must be made available to KDOL auditors; and
- 16) 2018 Amusement Ride Report of Itinerary needs to be filed with KDOL.

V. Witnesses:

Marlea James, KDOL Amusement Ride Coordinator
Ray Rutherford, KDOL Amusement Ride Auditor
Peter Brady, KDOL fellow
Andrew Jorgenson, KDOL attorney

Jeff Borba, KDOL contractor
Richard Borba, KDOL contractor
Matt Lawrence, General Manager of Schlitterbahn - Kansas City
Blake Hendricks, Operations Director for Schlitterbahn - Kansas City
Keith Fontenot, Operations Director for Schlitterbahn waterparks
Erin Thompson, legal counsel for Schlitterbahn

This Notice of Violation is issued on this 21st day of May 2018 by:

Marlea James
Marlea James
Amusement Ride Coordinator
KDOL Industrial Safety and Health Division
Attn: Amusement Rides
417 SW Jackson St.
Topeka, KS 66603-3327
(785) 296-4386

Subscribed and sworn to before me this 21st day of May, 2018.



Kelly A. Gardner
Notary Public

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 21 day of May, 2018, a true and correct copy of the foregoing Notice of Violation was served on KC Waterpark Management, LLC, dba Schlitterbahn - Kansas City, by:

 Certified Mail addressed to: _____
X Hand delivery (Name of individual served: Matt Lawrence -
General Manager)

Raymond H. Rutherford, Jr.
Name and Title
Raymond H. Rutherford, Jr.
Auditor
Amusement Ride Unit
Industrial Safety and Health
Kansas Department of Labor

NOTICE OF RIGHT TO AN INFORMAL CONFERENCE

This procedure shall be subject to the Kansas administrative procedure act.

Pursuant to K.S.A. 2017 Supp. 44-1610, and amendments thereto, **within 10 business days after a Notice of Violation has been issued** under the Kansas Amusement Ride Act, the person issued such notice may file a written request with the Kansas Department of Labor (the department) for an **informal conference** regarding the notice. **If the person issued the Notice of Violation does not request an informal conference within this time frame, all provisions of the Notice of Violation shall become final.** If the Notice of Violation is not resolved within the prescribed time frame, the department may seek judicial enforcement of the Notice of Violation, or an enforcement order may be issued.

In order to request an informal conference regarding the Notice of Violation, complete the attached form and return it to the office of the Secretary of Labor, Division of Industrial Safety and Health within 10 days of service of the Notice of Violation you are appealing.

If you received the Notice of Violation via U.S. Postal Service, you may add three (3) additional days for mail service. **You must complete all sections of this appeal form including a brief explanation of the reason (grounds) you are appealing the Notice of Violation.** Additional pages may be attached as needed.

If you chose to **mail** the request for an informal conference form, the mail service **must be** completed using a form of trackable mail. Please address and mail the appeal to:

KDOL Industrial Safety and Health Division
Attn: Amusement Ride Coordinator
417 SW Jackson St.
Topeka, KS 66603-3327

the **mail service must be completed using a form of trackable mail, such as certified mail.**

If you choose to **hand deliver** the request for an informal conference form, you may hand deliver the form to:

Kansas Department of Labor
Industrial Safety and Health Division
Attn: Amusement Ride Coordinator
401 SW Topeka Blvd.
Topeka, KS 66603

If you choose to e-mail the request for an informal conference form, you must e-mail the form to:
KDOL.Amusements@ks.gov

Additionally, whether you mail, e-mail or hand deliver the request for an informal conference form, you must also mail a copy of the form to the KDOL Legal department.

KDOL Legal Division
401 SW Topeka Blvd.
Topeka, KS 66603

NOTICE OF RIGHT TO A FAIR HEARING

Under K.S.A. 44-1610, you also have a right to a fair hearing under the Kansas Administrative Procedure Act (K.S.A. 77-501 *et seq.*). In accordance with K.S.A. 77-542, **a written request for a fair hearing must be filed with the Kansas Office of Administrative Hearings, 1020 S. Kansas, Topeka, Kansas 66612-1327, within 15 days of service of this Notice of Violation.** An additional 3 days shall be allowed if this Notice of Violation was mailed to you. You may have legal counsel to represent you at the fair hearing. If you are dissatisfied with the fair hearing decision, you may request in writing a review of the decision by the Secretary of Labor or her designee. The decision of the Secretary of Labor or her designee may be appealed to the state district court.

Additional information on how to file a request for a fair hearing may be obtained on-line at <https://www.oah.ks.gov>, or by contacting the Kansas Office of Administrative Hearings, 1020 S. Kansas, Topeka, Kansas 66612-1327; Phone: (785) 296-2433; Fax: (785) 296-4848.

Failure to file a timely request for a fair hearing will result in a waiver of your right to a hearing under the Kansas Administrative Procedure Act, and this Notice of Violation will become a Final Order.

If you file a request for a fair hearing, **a copy of the written request must also be served on the Secretary of Labor, 401 S.W. Topeka Boulevard, Topeka, Kansas 66603-3182.**

BEFORE THE SECRETARY OF LABOR
KANSAS DEPARTMENT OF LABOR
401 SW TOPEKA BLVD.
TOPEKA, KS 66603

This form must be fully completed, signed and dated, in order to serve as a valid request.

REQUEST FOR INFORMAL CONFERENCE

Pursuant to K.S.A. 2017 Supp. 44-1610, and amendments thereto:

I _____ (print your name), owner /
operator of an amusement ride under the Kansas Amusement Ride Act, hereby request an
informal conference regarding the Notice of Violation that I received on
_____ (date), in _____ County, Kansas, on the
____ day of _____, 20____.

I state that the following is true and correct to the best of my knowledge and belief.
Grounds for this appeal include, but are not limited to (attach additional sheets if necessary):

CONTINUED ON NEXT PAGE

REQUEST FOR INFORMAL CONFERENCE Page 2

Respectfully submitted:

_____ (print your name)

_____ (sign your name)

Date submitted: _____

Your mailing address:

Your phone number:

CHECK THE METHOD OF SERVICE THAT YOU USED TO SEND THIS NOTICE:

(See instructions in Notice of Violation for authorized methods of service)

_____ Certified Mail

_____ Hand delivery

_____ e-mail

Note: You must also mail a copy of this form to KDOL Legal Division

This form must be fully completed, signed and dated, in order to serve as a valid request.